

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2043

United States of America,

Appellee,

v.

Metodio Gutierrez, also known as
Gordo, also known as Juan Ramirez,
also known as Salvador Gutierrez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: February 4, 2005
Filed: February 7, 2005

Before BYE, RILEY, and COLLOTON, Circuit Judges.

PER CURIAM.

Metodio Gutierrez (Gutierrez) appeals the sentence the district court¹ imposed after Gutierrez pled guilty to conspiring to distribute and possess with intent to distribute 500 grams or more of a methamphetamine mixture, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1), and 846. The district court sentenced Gutierrez to the mandatory statutory minimum of 120 months imprisonment. See 21 U.S.C.

¹The Honorable Joseph F. Bataillon, Chief Judge, United States District Court for the District of Nebraska.

§ 841(b)(1)(A). Gutierrez's counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing Gutierrez's sentence is too harsh and the Sentencing Guidelines are unconstitutional as a whole. These arguments do not entitle Gutierrez to relief, because he was sentenced, independent of the Guidelines, to the statutory mandatory minimum, based on the stipulated drug quantity. To the extent Gutierrez is raising a constitutional challenge to the use of a mandatory minimum, his argument fails. See United States v. Collins, 340 F.3d 672, 679 (8th Cir. 2003). Having carefully reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.
